

REMARKS

I. Introduction

The undersigned thanks Examiner Sweet for his review and consideration of the present Application, including for the time spent discussing the application in a telephone interview on November 10, 2009.¹ The undersigned also thanks Examiner Sweet for indicating that claims 35-37 are allowed.

Upon entry of the amendment, claims 1, 3-11, 13-14, 16, 20-25, and 32-37 are pending in the application. The present amendment amends claims 1 and 23. Claims 2, 15, and 26-30 remain cancelled, and claims 12, 17-19, and 31 remain withdrawn. No new matter has been added by the present amendment. Support for the present amendments may be found, among other places, in Figures 1-3 of the specification.

The present response is believed to overcome all of the prior Office Action rejections, and allowance of the pending claims is kindly requested.

II. Rejection of Claims 1, 4-11, 13, 16, 20-25, and 32-34

The Office Action rejects claims 1, 4-11, 13, 16, 20-25, and 32-34 under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,888,204 to Ralph et al. ("204 patent"). The undersigned respectfully traverses this rejection. Regardless, in an effort to move this application toward allowance, the undersigned respectfully submits that currently amended claims 1, 4-11, 13, 16, 20-25, and 32 are patentable over the 204 patent.

¹ **Interview Summary:** During the November 10, 2009 telephone interview, representatives of applicants, the undersigned, and the Examiner discussed the cited references and proposed claim amendments.

Amended independent claims 1 and 23 both require a prosthetic component, a fixing member, and a screw that passes through the fixing member wherein, among other things, threaded disposition of the screw in the fixing member causes securing of the fixing member to the prosthetic component to occur whether or not the screw gains purchase in the bone.

In contrast to independent claims 1 and 23, the 204 patent shows an acetabular cup having at least one through-hole, into which a two-piece interlocking couple element and a bone screw may be inserted. 204 patent, abstract. Among other things, the 204 patent fails to disclose or suggest a fixing assembly having a screw that is oriented so that threaded disposition of the screw in a fixing member causes securing of the fixing member to the cup to occur whether or not the screw gains purchase in the bone, as required by amended claims 1 and 23.

Thus, the 204 patent, alone or in combination with U.S. Patent No. 5,607,426 to Ralph et al. ("426 patent") or any other reference of record, fails to disclose or suggest the fixing assembly of claims 1 and 23.

Claims 4-11, 13, 16, 20-22, and 32-34 depend from claim 1 and are therefore patentable for the same reasons claim 1 is patentable, and may be patentable for additional reasons. Claims 24-25 depend from claim 23 and are therefore patentable for the same reasons claim 23 is patentable, and may be patentable for additional reasons.

III. Rejection of Claims 3, 14 and 24

The Office Action rejects claims 3, 14, and 24 under 35 U.S.C. 102(b) as unpatentable over U.S. Patent No. 5,888,204 to Ralph et al. ("204 patent"), or alternatively,

under 35 U.S.C. § 103(a) as obvious over the 204 patent in view of the 426 patent. The undersigned traverses this rejection, as the undersigned respectfully submits that there is no motivation to combine these two references and, in any event, the combination of the 204 patent and the 426 patent does not result in the invention as claimed.²

Regardless, in an effort to move this application toward allowance, the present amendment amends claims 1 and 23. As described above, the 204 patent, alone or in combination with the 426 patent or any other reference of record, fails to disclose or suggest the fixing assembly of claims 1 and 23 because the 204 patent does not disclose or suggest a fixing assembly having a screw that is oriented so that threaded disposition of the screw in a fixing member causes securing of the fixing member to the cup to occur whether or not the screw gains purchase in the bone. Claims 3 and 14 depend from claim 1, and claim 24

² The Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex*, Federal Register, Vol. 72, No. 195, p. 57527 (October 10, 2007) explain what is required where an obviousness rejection is made:

As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deer Co.* Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the difference between the claimed invention and the prior art;

and

- (3) Resolving the level of ordinary skill in the pertinent art.

Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. . . .

Office personnel fulfill the critical role of fact finder when resolving the *Graham* inquires. . . . Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied.

. . .

Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C 103.

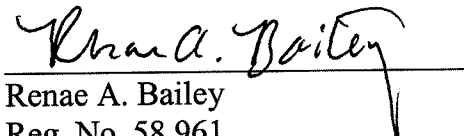
The undersigned respectfully submits that the May 21, 2009 Office Action does not fulfill these requirements.

depends from claim 23. Thus, dependent claims 3, 14, and 24 are patentable for the same reasons claims 1 and 23 are patentable, and may be patentable for additional reasons.

CONCLUSION

The undersigned respectfully submits that all pending claims are in a condition for allowance. Any fees due at this time may be charged to Deposit Account number 11-0855. If there are any matters that can be addressed by telephone, the Examiner is urged to contact the undersigned attorney at 404.532.6947.

Respectfully submitted,


Renae A. Bailey
Reg. No. 58,961
Attorney for the Applicants

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KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia, 30309-4530
404.532.6947 (direct dial)